

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YOVANNY DOMINGUEZ,

Plaintiff,

-v-

THE VINTAGE TWIN, LLC,

Defendant.

20 Civ. 202 (PAE) (GWG)

OPINION &
ORDER

PAUL A. ENGELMAYER, District Judge:

On January 9, 2020, plaintiff Yovanny Dominguez brought this action under the Americans with Disabilities Act (“ADA”), alleging that defendant’s website violated the ADA because it was not “equally accessible to blind and visually-impaired customers.” Dkt. 1 ¶ 5. On January 10, 2020, the Court referred this case to the Honorable Gabriel W. Gorenstein, United States Magistrate Judge, for general pretrial purposes. Dkt. 5. On January 29, 2020, Dominguez filed a document purporting to show service on defendant, The Vintage Twin, LLC. Dkt. 6. But defendant has not responded to the complaint or otherwise appeared in this action.

On February 1, 2021, after over a year without further activity in this case, Judge Gorenstein issued an order noting this “extraordinarily lengthy period of inaction,” and directing Dominguez to show cause why the case should not be dismissed for failure to prosecute under Federal Rule of Civil Procedure 41(b). Dkt. 7. That order instructed Dominguez to respond by memorandum of law and affidavit by February 15, 2021, and warned him that “failure to comply with this Order may in itself result in dismissal of this action.” *Id.* at 1. Dominguez has not since contacted the Court in any way.

Before the Court is the February 26, 2021, Report and Recommendation of Judge Gorenstein, recommending that the Court dismiss this action for failure to prosecute, pursuant to Rule 41(b). Dkt. 8 (“Report”). Dominguez has not objected or otherwise responded to the Report. The Court incorporates by reference the summary of the facts provided therein. For the following reasons, the Court adopts this recommendation.

DISCUSSION

In reviewing a report and recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Gorenstein’s well-reasoned Report reveals no facial error in its conclusion; the Report is therefore adopted in its entirety. Because the Report explicitly states that “the parties have fourteen (14) days (including weekends and holidays) from service of this Report and Recommendation to file any objections,” and that “[i]f a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal,” Report at 3, the parties’ failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Hum. Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the foregoing reasons, the Court dismisses this action, without prejudice, for failure to prosecute. The Clerk of Court is respectfully directed to terminate this case.

SO ORDERED.

A handwritten signature in blue ink, reading "Paul A. Engelmayer", is written over a horizontal line.

PAUL A. ENGELMAYER
United States District Judge

Dated: March 15, 2021
New York, New York